

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 22**

**NEW JERSEY MANUFACTURING  
EXTENSION PROGRAM, INC.<sup>1</sup>**

Employer

**and**

**CASE 22-RC-12144**

**COMMUNICATIONS WORKERS  
OF AMERICA, AFL-CIO, LOCAL 1032**

Petitioner

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,<sup>2</sup> the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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<sup>1</sup> The name of the Employer appears as amended at the hearing.

<sup>2</sup> Briefs filed by the Employer and the Petitioner have been fully considered.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.<sup>3</sup>
3. The labor organization involved claims to represent certain employees of the Employer.<sup>4</sup>
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act for the reasons described *infra*:

**All full and regular part-time Field Agents employed by the Employer from its Newark, New Jersey location, excluding all other employees, guards and supervisors as defined in the Act.**

The Petitioner seeks to represent the approximately eleven Field Agents employed by the Employer. The Employer, contrary to the Petitioner, asserts that Field Agents are managerial employees and, therefore, pursuant to Board policy cannot be found to be an appropriate collective bargaining unit.

The Employer is a New Jersey not-for-profit corporation that commenced operations in 1996. The Employer's business objective is to provide management consulting service to assist manufacturers in becoming "more productive, more

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<sup>3</sup> The Employer is a New Jersey not-for-profit corporation engaged in offering customized technical and business consulting services to New Jersey's small and medium sized manufacturers (500 employees or less).

profitable and more globally competitive.” In an effort to fulfill its business objective, the Employer employs Field Agents whose responsibility is to establish relationships with clients who believe they have problems effectively running their businesses. Once a client relationship has been formed, a Field Agent attempts to identify a “legitimate business opportunity” the client may have overlooked and then develop a “cost-justified proposal” for such client that will address ways to correct ineffectiveness found in the client’s business.

The record reveals that Field Agents are college graduates in technical fields who have worked in manufacturing. Field Agents work from their homes and are assigned to territories throughout the State of New Jersey based on geographic location. Each territory consists of approximately an equal number of “target industry accounts” - those that research has shown have a better opportunity of being successful when utilizing consulting services, such as rubber, plastics, metal fabrication and electronics industries. There are no set hours of work for Field Agents and compensation consists of a salary, based on the level that the particular Field Agent is on, and a bonus plan that is a “percentage of their salary based on achieving certain numeric objectives.”<sup>5</sup>

In the instant case, the Employer<sup>6</sup> contends the Field Agents are managerial employees because they exercise independent discretion and judgment

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<sup>4</sup> The parties stipulated, and I find, that Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

<sup>5</sup> Level-one Field Agent = \$55,000 to \$65,000; Level-two Field Agent = \$69,000; Level-three Field Agent = \$73,000; Level-four Field Agent = \$77,000. The record is not clear as to how bonuses are obtained or paid to Field Agents.

<sup>6</sup> Robert Loderstedt, President and CEO of the Employer, was the only witness to testify in this hearing.

in such a way that they can be considered “presidents of their own little company.” In support of its position that Field Agents are managerial employees, the Employer relies on the fact that Field Agents “basically run their own show.” The Employer notes that Field Agents are responsible for establishing client relationships “such that they (the Field Agent) can then work with that client to confirm . . . what the client thinks is a business problem they have.” Once a business problem is identified, the Field Agent drafts a proposal for the client to consider. When a deal is confirmed, the Field Agent solicits a third-party resource needed to implement the business plan that will provide the client with the most cost-efficient program.<sup>7</sup> Field Agents are not constrained to utilize a particular third-party resource and are given latitude to choose the resource that will work best for the client. Upon confirmation of the third-party resource, the Field Agent is responsible for macro-managing the project by ensuring that the resource is delivered to the client as agreed. In overseeing a project, Field Agents possess wide latitude to terminate third-party resources that they deem are not performing properly. The record discloses that at all times during the course of a project, Field Agents maintains account control and have the ultimate responsibility for the success or failure of the project.

The Employer asserts several additional procedural characteristics of the employment relationship with the Field Agents in an attempt to support its contention

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<sup>7</sup> A third-party resource is a company that will implement the business plan developed by the Employer. The Employer is only in the business of consulting and suggesting how a business can be run more efficiently, not in actual implementation of the business plan.

that the Field Agents are managerial employees. In this regard, Field Agents are “solely responsible for deciding when to start and finish each day, for determining the number of hours he or she works each day . . .” Furthermore, Field Agents are “not required to obtain approval for personal days or vacations . . .”

The record reveals that the Employer has in place an Executive Committee (“Committee”) which is the internal arm of the Employer that sets, implements and directs policy.<sup>8</sup> In this connection, it appears that the Committee reprimands Field Agents for misconduct or poor performance. The Employer’s President Loderstedt testified that all Field Agents report to him because he really “wears two hats,” one as the sales manager to whom the Field Agents report and the other as the President of the Employer. The Committee is also responsible for the development of a training guide that is given to Field Agents during an initial four weeks of training that is conducted by the Committee. Field Agents sign for and receive an employee manual when they are hired which contains the Employer’s policies and procedures that employees are required to follow in the course of their employment, such as vacation and reporting personal time off procedures. Loderstedt testified that Field Agents are subject to disciplinary actions, such as written warnings and suspensions, for violations of manual provisions. The record disclosed that Field Agents perform their duties in accordance with the parameters established by the Employer as codified in its policies and procedures manual.

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<sup>8</sup> It appears that the Committee is comprised of the Employer’s President, Chief Financial Officer, Personnel Business Advisor and the Assistant Marketing Manager.

The record disclosed that Loderstedt decides whether to extend an offer to hire a Field Agent, at what level the Field Agent will be compensated, whether or not the Field Agents have successfully completed training and to which geographic area Field Agents are assigned. Once assigned to a geographic area, Loderstedt becomes responsible for the approval of all proposals developed by the Field Agents. Field Agents submit their proposals electronically for review and approval by Loderstedt; all proposals require his approval and signature. Finally, Loderstedt is ultimately responsible for the firing of Field Agents, which Loderstedt has done 15 or 16 times within the Employer's five years of existence.

Managerial employees are persons in executive positions who have authority to formulate, determine or effectuate employer policies with respect to employee relations matters or whom employees could reasonably believe have such authority. *North Arkansas Electric Cooperative*, 185 NLRB 550 (1970). Managerial employees formulate and effectuate management policies by expressing and making operative the decisions of their employer. Under the tests used by the Board and the Courts, managerial employees are those who exercise discretion within, or even independently of, established employer policy and are aligned with management. *NLRB v. Yeshiva University*, 444 U.S. 672 (1980). An employee is excluded as managerial only if that person represents management interests by taking or recommending discretionary actions that effectively control or implement employer policy. *Id.* at 682-683.

The purpose of excluding individuals as managerial personnel rests on the premise that the functions and interest of such individuals are more closely allied with

those of management rather than production workers and they are not "employees" within the meaning of the Act. *NLRB v. Bell Aerospace Co.*, 416 U.S. 267 (1974). An employee does not acquire managerial status by making some decisions or exercising judgment within established limits set by higher management. In *Case Corp.*, 304 NLRB 939 (1991), for instance, the Board found industrial engineers were not managerial employees, even though they participated in grievance handling and bargaining, where the record failed to show that they had extensive authority to make employer policy.

Based on the foregoing, I find that the Field Agents are not managerial employees. Rather, the evidence reveals that they lack the requisite discretion and judgment, independent of the Employer's established policies, necessary to confer managerial status upon them. Like *General Dynamics*, 213 NLRB 851 (1974), the Employer herein "... makes the policy decision, the effective decision whether to reject or pursue the results of those technical judgments, all of which have been routinely rendered on the basis of, and as a result of, professional and/or technical expertise in accordance with the task assigned."

Managerial employees are "... 'much higher in the managerial structure' than those explicitly mentioned by Congress which 'regarded [them] as so clearly outside the Act that no specific exclusionary provision was found necessary.'" *NLRB v. Yeshiva University*, supra at 682. Although the Board has established no firm criteria for determining when an employee is so aligned, normally an employee may be excluded as managerial only if he represents management interests by taking or recommending discretionary actions that effectively control or implement employer

policy. *Sutter Community Hospital of Sacramento*, 227 NLRB 181, 193 (1976); *General Dynamics Corp.*, supra; *Convair Aerospace Div.*, 213 NLRB 851, 857 (1974); *Bell Aerospace*, supra at 274, 286-289. The Board has defined “managerial employees as those who formulate and effectuate management policies by expressing and making operative the decisions of their employer, and those who have discretion in the performance of their jobs independent of their employer’s established policy.” *General Dynamics*, supra at 857.

An employee’s job title does not determine managerial status; rather it is an employee’s actual job responsibilities, authority and relationship to management that determines the status. *Bell Aerospace*, supra at 290 fn.19. Nor do employees acquire managerial status by making decisions or exercising discretion “within established limits.” *Holly Sugar Corp.*, 193 NLRB 1024, 1026 (1971). The Board has also recognized that work that is based on professional competence “necessarily involves a consistent exercise of discretion and judgment . . . [but n]evertheless, professional employees plainly are not the same as management employees either by definition or in authority, and managerial authority is not vested in professional employees merely by virtue of their professional status, or because work performed in that status may have a bearing on company direction.” *General Dynamics*, supra at 857-58.

Therefore, employees whose discretion and latitude for independent action take place within the confines of the employer’s general directions are not managerial employees. *Bell Aerospace*, supra at 288 fn.16.

Based upon the above and the record as a whole, I find that the Employer has not met its burden in presenting sufficient evidence to support its contention that the



Field Agents should be exempted from coverage because they are managerial employees. The Employer's position, that because Field Agents are charged with the responsibility of overseeing a consulting project from inception through completion is synonymous with the status of managerial employees, is misplaced. In *General Dynamics*, supra, the Board held that employees who handle entire projects assigned to them undoubtedly is a tribute to their organizational skills and abilities, but has little, if any, bearing on managerial authority. Likewise, here, the discretion and decisions exercised by Field Agents are predicated solely on a technical base and culminate in technical reports or recommendations to managerial superiors who, in turn, determine, establish, and carry out management direction, i.e., 'policy,' by approving or disapproving the recommendations presented. In these circumstances, noting that Field Agents are not involved in formulating or effectuating managerial policies, I find that they are not managerial employees as defined by the Board and I will direct an election in the unit sought.

### **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently subject to the Board's Rules and Regulations. Eligible to vote are employees in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Also eligible are employees engaged in an economic strike that commenced less than 12 months before the election date and who retained their status as such

during the eligibility period and their replacements. Those in the military services of the United States who are employed in the unit may vote if they appear in person or at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible to vote shall vote whether or not they desire to be represented for collective bargaining purposes by **Communications Workers of America, AFL-CIO, Local 1032**.

### **LIST OF VOTERS**

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties in the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, two (2) copies of an election eligibility list containing the full names and addresses of all the eligible voters in the unit found appropriate above shall be filed by the Employer with the undersigned, who shall make the list available to all parties to the election. *North Macon Health Care Facility*, 315 NLRB 359 (1994). In order to be timely filed, such list must be received in NLRB Region 22, 20 Washington Place, Fifth Floor, Newark, New Jersey 07102, on or before December 4, 2001. No extension of time to file this

list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

### **RIGHT TO REQUEST REVIEW**

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by December 11, 2001

Signed at Newark, New Jersey this 27<sup>th</sup> day of November 2001.

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